

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021
TOM PROUNTZOS, ESQUIRE - State Bar #209409
2 JENKINS GOODMAN NEUMAN & HAMILTON LLP
417 Montgomery Street, 10th Floor
3 San Francisco, California 94104
Telephone: (415) 705-0400
4 Facsimile: (415) 705-0411

5 Attorneys for ROBERT J. NAGY
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 vs.
15 CHARLES CATHCART, et al.,
16 Defendants.

Case No. C-07-4762-PJH

**DECLARATION OF FARLEY J.
NEUMAN AUTHENTICATING
EXHIBITS TO DEFENDANT ROBERT
NAGY'S MOTION TO SEVER CLAIMS
AND TRANSFER VENUE**

Date: June 25, 2008
Time: 9:00 A.M.
Dept.: Room 3, 17th Floor

Trial Date: March 23, 2009

20 I, FARLEY J. NEUMAN, am an attorney duly licensed in the courts of the State of
21 California and am a Partner at Jenkins Goodman Neuman & Hamilton LLP, attorneys of
22 record for Defendant ROBERT J. NAGY.

23 1. Attached hereto as Exhibit A is a true and correct copy of the Declaration of
24 Robert J. Nagy.

Jenkins Goodman
Neuman & Hamilton
LLP
417 Montgomery St.
10th Floor
San Francisco, CA
94104
(415) 705-0400

2. Attached hereto as Exhibit B is a true and correct copy of the Initial Disclosure of Defendant Robert J. Nagy Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.

3. Attached hereto as Exhibit C is a true and correct copy of The United States's Initial Disclosures.

4. Attached hereto as Exhibit D is a true and correct copy of the District Court – Caseload Profiles for the Northern District of California and the District of South Carolina.

DATED: May 2, 2008

JENKINS GOODMAN NEUMAN
& HAMILTON LLP

By:


FARLEY J. NEUMAN
Attorneys for ROBERT J. NAGY

EXHIBIT “A”

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021
TOM PROUNTZOS, ESQUIRE - State Bar #209409
2 JENKINS GOODMAN NEUMAN & HAMILTON LLP
417 Montgomery Street, 10th Floor
3 San Francisco, California 94104
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5 Attorneys for ROBERT J. NAGY

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8 UNITED STATES DISTRICT COURT
NOTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10
11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 CHARLES CHATHCART, SCOTT
CATHCART, YURIJ DEBEVC, a/k/a
15 YURI DEBEVC, ROBERT NAGY,
DERIVUM CAPITAL, LLC,
16 DERIVUM CAPITAL (USA), INC.,
AND VERIDIA SOLUTIONS, LLC,

17 Defendants.
18

Case No. C-07-4762-PJH

**DECLARATION OF ROBERT J. NAGY
IN SUPPORT OF MOTION TO SEVER
ALL CLAIMS AND TRANSFER
VENUE PURSUANT TO 28 U.S.C.
1404(a)**

Date: June 25, 2008

Time: 9:00 a.m.

Dept.: Room 3, 17th Floor

Trial Date: March 23, 2009

19 I, Robert J. Nagy, under 28 U.S.C. § 1746, declare as follows:

20 1. I am a named defendant in the above-captioned lawsuit pending in the
21 United States District Court for the Northern District of California.

22 2. This Declaration is submitted in conjunction with a Motion to Sever All
23 Claims and Transfer Venue Pursuant to 28 U.S.C. 1404(a), which seeks to transfer all
24 claims against me in the present suit from the United States District Court for the Northern
25 District of California to the United States District Court for the District of South Carolina.
26

1 3. I currently reside in Charleston County, South Carolina. I am a licensed
2 certified public account in the State of South Carolina and maintain an accounting practice
3 located at 180 East Bay Street, Suite 201, Charleston, South Carolina. I was licensed in
4 1977, and have been a practicing accountant in South Carolina from 1974 to the present.

5 4. The current action for injunction against me by the United States is based in
6 part on alleged violations of Section 6700 of the Internal Revenue Code¹ ("Section 6700").
7 This action was commenced on September 17, 2007.

8 5. After the IRS initiated this injunction action and after I answered the
9 Complaint, the IRS then assessed me on December 27 and 28, 2007 with approximately
10 \$8.2 million in penalties under Section 6700 for the 1997 to the 2005 tax years. A notice
11 of federal tax lien was also filed against me based on these Section 6700 penalties. A true
12 and correct copy of the notice of assessments and notice of federal tax lien is attached as
13 Exhibit 1.

14 6. Within 30 days of being given notice of the assessments, and pursuant to
15 section 6703(c) of the Internal Revenue Code, I timely filed claims for refund with the IRS
16 on January 23, 2008 requesting that the IRS abate the \$8.2 million in Section 6700
17 penalties for the 1997 to the 2005 tax years. The basis for my claims for refund is that I
18 did not violate Section 6700.

19 7. If the claims for refund are allowed, the Section 6700 penalties will be
20 abated, and I will not be liable to the IRS. If the claims for refund are denied, I will
21 promptly file refund litigation against the United States in the United States District Court
22 for South Carolina under section 6703(c)(2) of the Internal Revenue Code and section
23 7422 of the Internal Revenue Code. Alternatively, if the IRS does not act on my claims for
24 refund within six months of the date I filed them, I will also file refund litigation against
25 the United States in the United States District Court for South Carolina pursuant to section

26 ¹ Title 26 of the United States Code.

1 6703(c)(2) of the Internal Revenue Code (“South Carolina Refund Litigation”).

2 8. I have retained Lindsey W. Cooper, Jr., an attorney in South Carolina, to
3 represent me with respect to the Section 6700 penalties and to file the South Carolina
4 Refund Litigation if my claims for refund are denied. It is my understanding that the
5 issues in the South Carolina Refund Litigation would be the same as those in the present
6 injunction action, as the activity or activities in which the IRS alleges I engaged are the
7 basis for both the injunction action and the penalty assessments. Nonetheless, because the
8 United States has pursued the injunction action in California, I am now compelled to deal
9 with these issues in two separate states, with two separate attorneys, resulting in
10 considerable additional time and expense.

11 9. I am informed and believe that if I pursue the South Carolina Refund
12 Litigation, I will be entitled to a trial by jury under the Seventh Amendment to the
13 Constitution. I intend to avail myself of this right to a jury trial.

14 10. I am also informed and believe that such refund litigation will involve a
15 determination of whether I violated Section 6700 of the Internal Revenue Code, which is
16 also an issue in the present injunction action.

17 11. I am further informed and believe that if the issue of whether I violated
18 Section 6700 is adjudicated in the present injunction action first, that I will be precluded or
19 estopped or otherwise prevented from litigating this issue in the refund action.

20 12. I am further informed and believe that I have no right to a jury trial in the
21 present action for injunction.

22 13. I am further informed and believe that if the issue of whether I violated
23 Section 6700 is adjudicated in the present injunction action and I am estopped from
24 litigating it in the South Carolina Refund Litigation, that I will be denied my right to a jury
25 trial with regard to that issue in violation of the Constitution.

26 14. Based on this potential deprivation of my constitutional right to a jury trial, I

1 intend to file a motion to stay the present injunction action immediately after I file the
2 South Carolina Refund Litigation.

3 15. I am informed and believe that this Court will be bound to grant a motion to
4 stay the proceedings pursuant to the precedent of *United States v. Nordbrock* (1991 9th
5 Cir.) 941 F.2d 947.

6 16. I have taken steps to try to expedite the apparent inevitable need to file the
7 South Carolina Refund Litigation, including requesting that the IRS deny my refund
8 claims immediately so that I may immediately file a refund action. I have also sent a
9 waiver of notice of disallowance to the IRS so my claims for refund could immediately be
10 denied. A copy of the Waiver of Statutory Notification of Claim Disallowance and cover
11 letter are attached as Exhibit 2. Mr. Cooper has also attempted to prompt the IRS to act.
12 None of our efforts, however, have resulted in action on my refund claims. I have been
13 informed by Mr. Cooper that he was told by Marie Allen, a Revenue Agent with the IRS,
14 that the IRS would not act on my refund claim "for a long time".

15 17. I have never been a member, manager or had any direct or indirect
16 ownership in Derivium Capital, LLC ("Derivium"). I have never been an employee of
17 Derivium.

18 18. Derivium was a client of my accounting firm for which I prepared tax returns
19 and provided tax advice regarding the 90% loan transactions. The advice I provide
20 concerning the 90% loan transactions was to my client Derivium.

21 19. In providing advice to Derivium, I mainly communicated with Charles
22 Cathcart who was a manager of Derivium and lived in Charleston, South Carolina. The
23 individuals with whom I communicated at Derivium were located in South Carolina as
24 Derivium is a South Carolina limited liability company.

25 20. Derivium's ongoing bankruptcy proceeding is in South Carolina, and its
26 corporate documents are in the possession of the trustee in Charleston, South Carolina.

21. I traveled to California one time in my capacity as Derivium's outside accountant or tax advisor. I never met or communicated with any Derivium borrowers while in California. I can only recall traveling to California two other times over the course of my life prior to the filing of this lawsuit. One trip was for business wholly unrelated to Derivium, and one trip was entirely personal.


22. In my answer to the United States' complaint, I denied that venue was appropriate in California for the reasons stated above. (Nagy Answer ¶¶1-2.)

23. The IRS assessed the Section 6700 penalties against me after filing the present injunction action, and I will be required to file my refund claim in South Carolina to dispute the assessments. It is a substantial burden and hardship to me to have to litigate the same Section 6700 issue in two separate proceedings and in two separate jurisdictions on opposite coasts. The IRS unilaterally caused this burden and procedural issue by waiting to assess the Section 6700 penalties until after it initiated the filing of the present lawsuit and by refusing to expeditiously act on my claims for refund.

24. By refusing to act quickly on my claim for refund, the IRS is causing me unnecessary time and expense, as well as interfering with the judicial economy of the Court's time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 24, 2008.



Robert J. Nagy
180 East Bay Street, Suite 201
Charleston, SC 29401



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

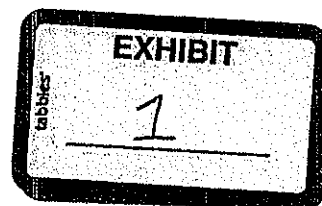
SMALL BUSINESS / SELF-EMPLOYED DIVISION

Date: January 8, 2008

Robert Nagy
PO Box 22765
Charleston, SC 29413

Dear Mr. Nagy:

We have made assessments against you for the following:



TAX YEAR PERIOD	ASSESSED AMOUNT	ACCRUALS	TOTAL DUE
IRC 6700 12/31/1997	16,000.00		16,000.00
IRC 6700 12/31/1998	119,000.00		119,000.00
IRC 6700 12/31/1999	388,000.00		388,000.00
IRC 6700 12/31/2000	749,000.00		749,000.00
IRC 6700 12/31/2001	519,000.00		519,000.00
IRC 6700 12/31/2002	370,000.00		270,000.00
IRC 6700 12/31/2003	231,000.00		231,000.00
IRC 6700 12/31/2004	2,929,620.00		2,929,620.00
IRC 6700 12/31/2005	2,873,188.00		2,873,188.00
TOTAL DUE			\$8,094,808.00

See the enclosed notices for each period. Please send your payment for the above amount to the address shown below. If payment is not received within ten days from the date of this letter a Notice of Federal Tax Lien will be filed.

Generally, our practice is to deal directly with a taxpayer or a taxpayer's duly authorized representative. However, we sometimes talk with other persons, for example when we need information that the taxpayer has been unable to provide, or to verify information we have received.

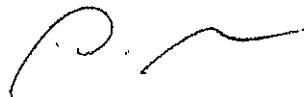
We are writing to tell you that we may contact other persons. If we do contact other persons we will generally need to tell them limited information, such as your name. The law prohibits us from disclosing any more information than is necessary to obtain or verify the information we are seeking. Our need to contact other persons may continue as long as there is activity on this matter.

If you have any questions or need more information, please contact me at the address or telephone number listed below:

Internal Revenue Service
450 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

Phone#: 415-522-4194
Fax#: 415-522-4156

Sincerely,



Gregory W. Gillen
Revenue Officer
Employee ID#: 68-11596

Enclosure: Form 3552
Publication 1
Publication 594

Notice of Federal Tax Lien

Small Business/Self Employed Area: 7	Serial Number 416679308	For Optional Use by Recording Office
<p>As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.</p>		
<p>Name of Taxpayer Robert J Nagy</p>		
<p>Residence PO BOX 22765 Charleston, SC 29412</p>		
<p>IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).</p>		

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
6700	12/31/1997	XXX-XX-3584	12/27/2007	01/27/2018	\$16,000.00
6700	12/31/1998	XXX-XX-3584	12/28/2007	01/27/2018	\$119,000.00
6700	12/31/1999	XXX-XX-3584	12/28/2007	01/27/2018	\$388,000.00
6700	12/31/2000	XXX-XX-3584	12/28/2007	01/27/2018	\$749,000.00
6700	12/31/2001	XXX-XX-3584	12/28/2007	01/27/2018	\$519,000.00
6700	12/31/2002	XXX-XX-3584	12/28/2007	01/27/2018	\$370,000.00
6700	12/31/2003	XXX-XX-3584	12/28/2007	01/27/2018	\$231,000.00
6700	12/31/2004	XXX-XX-3584	12/28/2007	01/27/2018	\$2,929,620.00
6700	12/31/2005	XXX-XX-3584	12/28/2007	01/27/2018	\$2,873,188.00

Place of Filing REGISTER OF DEEDS 2 COURTHOUSE SQUARE CHARLESTON, SC 29402	Total	\$8,194,808.00
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This notice was prepared and signed at LOS ANGELES, CA, on this, the 22nd day of January, 2008 .

Signature Greg Gillen by Pamela Snow	Title Revenue Officer, 27-06-1312
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(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-466, 1971-2 C.B. 409)

Part 2 - Taxpayer Copy

Form 668(Y) (Rev. 10-1999)



LINDSEY W. COOPER JR.

LWC@LWCOOPER.COM

February 12, 2008

VIA FIRST-CLASS MAIL

Marie Allen
Internal Revenue Service
4330 Watt Avenue
Sacramento, CA 95821-5302

Re: Claims for Refund for Robert Nagy, SSN 249-90-1652

Dear Ms. Allen:

Please find enclosed two original copies of a Form 2297, Waiver of Statutory Notification of Claim Disallowance. I left a message for Robert Gee yesterday to schedule a conference so we can discuss Mr. Nagy's assessments and claims for refund. I would appreciate your assistance in setting up this conference.

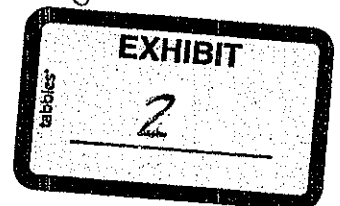
Many thanks.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Lindsey W. Cooper Jr.', written over a horizontal line.

Lindsey W. Cooper Jr.

Enclosures: Forms 2297.



- 1 -

Form **2297**
(Rev. March 1982)

Department of the Treasury-Internal Revenue Service

Waiver of Statutory Notification of Claim DisallowanceI, Robert J Nagy249-90-1652of PO Box 22765, Charleston, SC 29413

(Name, SSN or EIN)

(Number, Street, City or Town, State, ZIP Code)

waive the requirement under Internal Revenue Code section 6532(a)(1) that a notice of claim disallowance be sent to me by certified or registered mail for the claims for credit or refund shown in column (d), below.

I understand that the filing of this waiver is irrevocable and it will begin the 2-year period for filing suit for refund of the claims disallowed as if the notice of disallowance had been sent by certified or registered mail.

Claims

(a) Taxable Period Ended	(b) Kind of Tax	(c) Amount of Claim	(d) Amount of Claim Disallowed
12/31/1997	6700	150	150
12/31/1998	6700	150	150
12/31/1999	6700	150	150
12/31/2000	6700	150	150
12/31/2001	6700	150	150
12/31/2002	6700	150	150
12/31/2003	6700	150	150
12/31/2004	6700	150	150
12/31/2005	6700	747	747

If you file this waiver for a joint return, both you and your spouse must sign the original and duplicate of this form. Sign your name exactly as it appears on the return. If you are acting under power of attorney for your spouse, you may sign as agent for him or her.

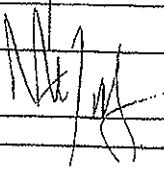
For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed.

For a partnership with excise or employment tax liability, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a person acting in a fiduciary capacity (executor, administrator, trustee), file Form 56, Notice Concerning Fiduciary Relationship, with this form if not previously filed.

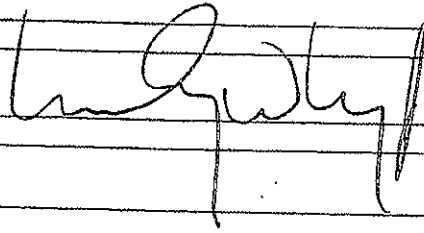
For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

Your Signature →



2/11/2008

(Date signed)

Spouse's Signature
If A Joint Return
Was Filed →Taxpayer's
Representative
Sign Here →

(Date signed)

02.12.2008

(Date signed)

Partnership/
Corporate
Name:Partners/
Corporate
Officers
Sign Here

(Title)

(Date signed)

(Title)

(Date signed)

NOTE - Filing this waiver within 6 months from the date the claim was filed will not permit filing a suit for refund before the 6-month period has elapsed unless a decision is made by the Service within that time disallowing the claims.

(HTA)

www.irs.ustreas.gov

Form **2297** (Rev. 3-1982)

EXHIBIT “B”

1 FARLEY J. NEUMAN, ESQUIRE - State Bar #100021
TOM PROUNTZOS, ESQUIRE - State Bar #209409
2 JENKINS GOODMAN NEUMAN & HAMILTON LLP
417 Montgomery Street, 10th Floor
3 San Francisco, California 94104
Telephone: (415) 705-0400
4 Facsimile: (415) 705-0411

5 Attorneys for DEFENDANT ROBERT J. NAGY
6
7

8 IN THE UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 vs.
15 CHARLES CATHCART, SCOTT
CATHCART, YURIJ DEBEVC, a/k/a/
16 YURIJ DEBEVC, ROBERT NAGY,
DERIVUM CAPITAL, LLC,
17 DERIVUM CAPITAL (USA), INC.,
and VERIDIA SOLUTIONS, LLC,
18 Defendants.
19

Case No. C 07 4762 PJH

**INITIAL DISCLOSURE OF
DEFENDANT ROBERT J. NAGY
PURSUANT TO RULE 26(a)(1) OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

20 Defendant ROBERT J. NAGY makes this disclosure pursuant to Rule 26(a)(1) of
21 the Federal Rules of Civil Procedure. Defendant's investigation continues, and he
22 anticipates that new facts, documents and relevant information may be discovered.
23 Defendant will comply with his duty to supplement this disclosure as required by Rule 26.

24 A. The name and, if known, the address and telephone number of each individual
likely to have discoverable information that the disclosing party may use to support
25 its claims or defenses, unless solely for impeachment, identifying the subjects of the
information.
26

Jenkins Goodman
Neuman & Hamilton
LLP
417 Montgomery St.
10th Floor
San Francisco, CA
94104
(415) 705-0400

Name, Address & Tel. No. (if known)	Subject of Information
Robert J. Nagy (This witness should be contacted through his counsel only.)	All issues raised in the complaint and answer thereto, including but not limited to whether Mr. Nagy organized, sold, or participated in the organization or sale of, an entity, plan or arrangement; whether Mr. Nagy made or caused to be made false or fraudulent statements concerning tax benefits; and whether Mr. Nagy knew or had reason to know any alleged statements were false or fraudulent.
Neva Gadsden 1 Poston Road, Suite 200 Charleston, SC 29407 (843) 566-0209	All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.
Mary S. Socks Internal Revenue Service 11166 Main Street, Suite 500 Fairfax, VA 22030	All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.
Frank Guida Internal Revenue Service 440 Roper Mt. Road, Suite E Greenville, SC 29615	All issues raised in the complaint and answer thereto, including but not limited to the 1998 IRS audit of Derivium Capital.
Marie Allen 4330 Watt Avenue Sacramento, CA 95821 (916) 974-5302	All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to IRC section 6700.
Lori Dixon Internal Revenue Service Hutchinson Metro Center 1200 Waters Place, Suite 108 Bronx, NY 10461 (718) 536-3683	All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to IRC section 6700.
Robert Gee 450 Golden Gate Ave., Stop 6107	All issues raised in the complaint and answer thereto, including but not limited to IRS examination of Mr. Nagy with respect to

San Francisco, CA 94102 (415) 522-6119	IRC section 6700.
Robert J. Brandenburg 109 President Circle Summerville, SC 29483	All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital.
Timothy D. Scrantom 89 Wildrose Lane Bozeman, MT 59715	All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital.
Yurij Debevc 1483 Burning Tree Road Charleston, SC 29412	All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital.
Charles D. Cathcart P.O. Box 754 Tuxedo Park, NY 10987	All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital.
Scott Cathcart 32 Fern Hill Avenue Ross, CA 94957	All issues raised in the complaint and answer thereto, including but not limited to the extent of Mr. Nagy's alleged participation in transactions of Derivium Capital.

A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

Category	Location
Memoranda prepared by Mr. Nagy concerning tax implications of the stock loans.	Charleston, South Carolina, in the possession, custody, or control of Mr. Nagy (who should be contacted through his counsel only).
Documents regarding payment to Mr. Nagy from Co-Defendant(s).	Same as above.
Documents regarding the IRS audit of Derivium, including "No Change" letter.	Same as above.
Examination change reports for tax payers participating in stock loans, showing no penalties ultimately assessed.	Same as above.
Stock loan documents.	Same as above.

1
2 B. A computation of any category of damages claimed by the disclosing party, making
3 available for inspection and copying as under Rule 34 the documents or other
4 evidentiary material, not privileged or protected from disclosure, on which such
5 computation is based, including materials bearing on the nature and extent of
6 injuries suffered.

7 Not applicable as Mr. Nagy has claimed no damages in this action.

8
9 C. For inspection and copying as under Rule 34 any insurance agreement under which
10 any person carrying on an insurance business may be liable to satisfy part or all of a
11 judgment which may be entered in the action or to indemnify or reimburse for
12 payments made to satisfy the judgment.

13 Not applicable as the United States has not sought judgment for any monetary sums
14 in this action.

15 DATED: February 22, 2008

JENKINS GOODMAN NEUMAN
& HAMILTON LLP

16 By: 

FARLEY J. NEUMAN

TOM PROUNTZOS

Attorneys for DEFENDANT ROBERT J.
NAGY

PROOF OF SERVICE**CASE NAME:** *United States of America v. Charles Cathcart, et al.,***CASE NUMBER:** C 07 4762 PJH**DATE OF SERVICE:** February 22, 2008**DESCRIPTION OF DOCUMENTS SERVED:**

**INITIAL DISCLOSURE OF DEFENDANT ROBERT J. NAGY
PURSUANT TO RULE 26(a)(1) OF THE FEDERAL RULES OF
CIVIL PROCEDURE**

SERVED ON THE FOLLOWING:**Attorneys for United States**

SCOTT N. SCHOOLS

United States Attorney

THOMAS MOORE, Assistant United States
Attorney

Chief, Tax Division

9th Floor Federal Building

450 Golden Gate Avenue, Box 36055

San Francisco, CA 94102

Tel. 415.436.6935

HUONG T. BAILIE, Special Trial Attorney

160 Spear Street, 9th Floor

San Francisco, CA 94105

Tel. 415.227.5123

ALLYSON B. BAKER

Trial Attorney

Tax Division

U.S. Department of Justice

P.O. Box 7238

Washington, D.C. 20044

Tel. 202.353.8031

Attorney For Defendant Scott Cathcart

David B. Porter

WOOD & PORTER, P.C.

333 Sacramento Street

San Francisco, CA 94111

Tele: [415] 834-0117

Fax: [415] 834-1888

Attorney for Yuriy Debevc

Yuriy Debevc

1483 Burningtreet Road

Charleston, SC 29414

Tele: [834] 762-6116

Attorney for Defendant Charles Cathcart

Eric L. Webb

BARTSCH & WEBB

317 Rosecrans Avenue

Manhattan Beach, CA 90266

Tele: [310] 546-4004

Fax: [310] 546-4033

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Jenkins Goodman Neuman & Hamilton LLP, and my business address is 417 Montgomery Street, 10th Floor, San Francisco, CA 94104. On the date stated above, I served a true copy of the document(s) described above, by mail, by placing said document(s) in an envelope, addressed as shown above for collection and mailing on the date shown above following the ordinary business practices of Jenkins Goodman Neuman & Hamilton LLP. I am readily familiar with my firm's practice for collection and

1 processing of correspondence for mailing with the United States Postal Service. Under
2 that practice, said document(s) would be deposited with the United States Postal Service at
3 a post box in San Francisco, California on the same day (at approximately 5:00 P.M.) with
4 postage thereon fully prepaid for first class mail.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct and that this declaration was executed on the date stated
7 above.

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10 Nikki Sands
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EXHIBIT “C”

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IN THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CHARLES CATHCART *et al.*

Defendants.

Civil No. 07-4762-PJH

THE UNITED STATES'S
INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, defendant, the United States of America makes the following initial disclosures:

I. Individuals

The following individuals may have discoverable information that the United States may use to support its claims or defenses in this case:

1 A. The following individuals may have information relating to (I) the promotion,
2 execution, mechanics, history, scope, and extent of any tax-fraud scheme promoted and/or
3 organized by the defendants, including the 90% Loan programs, as those programs are described
4 in the complaint and/or (ii) the role of any entity by or related to any defendant, including
5 Derivium Capital, LLC, Derivium (USA), Inc., Veridia Solutions, BVL, Optech Limited, Whitco,
6 in promoting and/or organizing any aspect of any tax-fraud scheme, including the 90% Loan
7 programs, as those programs are described in the complaint:

- 8 1. Charles Cathcart
9 c/o Eric Webb
10 Bartsch & Webb
317 Rosecrans Avenue
Manhattan Beach, California 90266
- 11 2. Scott Cathcart
12 c/o David Bujannoff Porter, Jr.
13 Wood & Porter
333 Sacramento Street
San Francisco, CA 94111
- 14 3. Yuri Debevc
15 1483 Burningtreet Road
Charleston, SC 29412
- 16 4. Robert Nagy
17 c/o Farley J. Neuman
Tom Proutzos
18 Jenkins Goodman Neuman & Hamilton LLP
417 Montgomery Street, 10th Floor
19 San Francisco, CA 94104
- 20 5. Randolph Anderson
Charleston, South Carolina
- 21 6. Robert Brandenburg
22 Charleston, South Carolina
- 23 7. Mark Broadwater
Charleston, South Carolina
- 24 8. Jack Flader
25 157 Hong Lok East
Hong Lok Hong Kok Yuen Po Nt.
26 Hong Kong
- 27 9. Chi-Hsu Hsin
28 321 Courthouse Road

Franklin Square, New York 11010-3936

10. Bryan Jeeves
Jeeves Group of Companies
Bahnhofstrasse 7
Schaan
Lichtenstein

11. Ron Jenkins
Charleston, South Carolina

12. Patrick Kelley
Charleston, South Carolina

13. David Lancaster
California

14. Clifford Lloyd
142 James St. S.
Hamilton, Ontario, L8P 3A2

15. Jerry Pryor
Charleston, South Carolina

16. Catherine Sandifer
London, England

17. Jonathan Sandifer
London, England

18. Timothy Scrantom
Montana

19. Allison Skinner
Charleston, South Carolina

20. Franklin Thomason
11469 West Camdon Drive
Casa Grade, Arizona 85222

21. To the extent not mentioned above, current or former employees of the following companies with information relating to that company's involvement with the promotion, organization, and/or execution of the 90% Loan programs, as those programs are described in the complaint:

a. Scienda LLC
Charleston, South Carolina

- 1 b. Shenandoah Holdings, LLC (Nevada)
- 2 c. Diversified Design Associates, Ltd. (South Carolina)
- 3 d. Bancroft Ventures Limited
4 Douglas, Isle of Man, British Isles
- 5 e. Optech Limited
6 590 Madison Avenue, 31st Floor
7 New York, New York 10022
- 8 f. Spencer Partners
- 9 g. WITCO
10 London, England
- 11 h. Veristeel
12 Nevada

13 B. The following individuals may have information relating to the role of any banks,
14 investment banks, broker-dealers and/or other financial institutions in the promotion, execution,
15 and/or organization of any tax-fraud scheme promoted or organized by defendants, including the
16 90% Loan programs, as those programs are described in the complaint:

- 17 1. Robert Gooch
18 Morgan Keegan and Company, Inc.
19 Memphis, Tennessee
- 20 2. George Gordon
21 Wachovia Corporation
22 Richmond, Virginia
- 23 3. Kevin Haase
24 Janney Montgomery Scott, LLC
25 Philadelphia, Pennsylvania
- 26 4. David Johansen
27 Napa Valley, California

28 5. One or more individuals employed currently or previously by Wachovia Corporation
with information relating to that company's involvement with the promotion, organization and/or
execution of the 90% Loan programs, as those programs are described in the complaint.

6. One or more individuals employed currently or previously by Morgan Keegan and
Company, Inc. with information relating to that company's involvement with the promotion,

1 organization and/or execution of the 90% Loan programs, as those programs are described in the
2 complaint.

3 7. One or more individuals employed currently or previously by Janney Montgomery
4 Scott, LLC with information relating to that company's involvement with the promotion,
5 organization, and/or execution of the 90% Loan programs, as those programs are described in the
6 complaint.

7
8 C. The following individuals may have information relating to the false and/or fraudulent
9 statements made by defendants, and/or any entities owned, operated, or affiliated with defendants
10 in connection with their promotion, execution, and/or organization of the 90% Loan programs:

- 11 1. Arline Baker
12 Pennsylvania
- 13 2. Chris Benigno
14 Texas
- 15 3. Ted Bush
16 California
- 17 4. Ellen Carrie
18 Texas
- 19 5. Robert G. Fisher
20 Texas
- 21 6. Donald Hancock
22 Fair Oaks, California
- 23 7. Hammond
24 Texas
- 25 8. Douglas Hartman
26 California
- 27 9. Members of the Newton Family
28 Wyoming
10. Daryl Paules
Pennsylvania
11. Richard Potempa
Colorado

12. Robert Sablehaus
Baltimore, Maryland
13. Jing Li Sun
California
14. Jiong Sun
California
15. David Welch
Menlo Park, California

II. Documents

The United States has the following categories of documents within its possession, custody or control that it may use to support its claims or defenses in this case:

- A. Defendants' promotional materials relating to the 90% Loan programs.
- B. Master Loan Agreements executed by defendants and/or related entities in connection with the 90% Loan programs.
- C. Investment and Loan Agreements executed by defendants in connection with the 90% Loan programs.
- D. Stock Loan Administration Agreements executed by defendants in connection with the 90% Loan programs.
- E. Incorporation documents for companies operated by and/or affiliated with defendants in connection with their promotion, execution and organization of the 90% Loan programs.
- F. Incorporation documents for companies founded by Charles Cathcart and/or other defendants with the proceeds they received from the 90% Loan programs.
- G. Defendants' individual and corporate tax returns.
- H. Lists of customers who participated in the 90% Loan programs.
- I. Documents reflecting defendants' customers' 90% Loan program transactions.
- J. Lists of qualified advisors for Derivium Capital, LLC and its related entities.
- K. The following publicly available documents:

1 1. Court filings in the related cases referenced in Part No. 9 of the Parties' Joint
2 Case Management Statement, filed December 28, 2007, Dkt. # 22.

3 2. Court documents from People of the State of California v. Derivium Capital,
4 LLC, et al., Case No. 02AS05849.

5 3. News articles discussing Charles Cathcart, Derivium Capital, LLC, and/or the
6 90% Loan programs, as they are described in the complaint.

7 **III. Damages**

8 The United States is not seeking damages in this cases.

9 **IV. Insurance Agreements**

10 Insurance agreements are not applicable to this case.

11
12 February 25, 2008

13 Respectfully submitted,

14 JOSEPH P. RUSSONIELLO
15 United States Attorney

16 /s/ Allyson B. Baker
17 ALLYSON B. BAKER
18 Trial Attorney, Tax Division
19 U.S. Department of Justice
20 Post Office Box 7238
21 Ben Franklin Station
22 Washington, D.C. 20044
23 Telephone: (202) 353-8031
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27
28

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing has been made upon the following by depositing a copy in the United States mail, postage prepaid, and through e-mail, this 11th day of February, 2008.

Farley J. Neuman (fneuman@jgn.com)
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Attorney for Charles Cathcart

/s/ Allyson B. Baker
ALLYSON B. BAKER

EXHIBIT “D”

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

			12-MONTH PERIOD ENDING SEPTEMBER 30							
CALIFORNIA NORTHERN			2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*		7,970	8,683	6,362	6,727	6,919	7,887	U.S.	Circuit
	Terminations		6,777	6,983	6,966	6,471	7,094	6,675		
	Pending		9,005	8,157	6,557	7,267	7,567	7,958		
	% Change in Total Filings	Over Last Year		-8.2					79	15
Over Earlier Years			25.3	18.5	15.2	1.1	35	5		
Number of Judgeships			14	14	14	14	14	14		
Vacant Judgeship Months**			.0	.0	.0	.0	3.1	12.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	569	620	455	480	494	563	15	4
		Civil	505	558	390	413	424	510	8	2
		Criminal Felony	33	37	39	44	47	42	86	14
		Supervised Release Hearings**	31	25	26	23	23	11	28	10
	Pending Cases		643	583	468	519	541	568	12	2
	Weighted Filings**		624	621	543	581	631	598	8	2
	Terminations		484	499	498	462	507	477	30	7
	Trials Completed		8	8	10	10	11	11	92	14
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	12.4	11.2	12.6	11.1	11.7	11.8	82	14
		Civil**	6.7	7.4	9.8	8.2	10.6	9.5	11	2
	From Filing to Trial** (Civil Only)		24.9	25.0	28.0	22.5	30.3	23.5	46	7
OTHER	Civil Cases Over 3 Years Old**	Number	393	528	530	430	377	475		
		Percentage	4.7	7.3	9.5	6.9	5.7	6.7	51	5
	Average Number of Felony Defendants Filed Per Case		1.2	1.5	1.5	1.4	1.5	1.4		
	Jurors	Avg. Present for Jury Selection	53.81	59.09	55.21	61.19	65.00	66.42		
		Percent Not Selected or Challenged	41.9	43.2	31.0	48.9	40.9	47.2		

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7074	122	975	1610	94	44	534	527	243	533	732	422	1238
Criminal*	455	6	72	162	40	64	11	38	5	6	16	15	20

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

					12-MONTH PERIOD ENDING SEPTEMBER 30							
SOUTH CAROLINA					2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*				5,508	4,670	4,875	24,510	5,210	5,211	U.S.	Circuit
	Terminations				5,370	4,984	25,042	5,377	4,981	4,685		
	Pending				3,877	3,705	3,964	24,228	5,167	4,988		
	% Change in Total Filings	Over Last Year				17.9					7	1
		Over Earlier Years					13.0	-77.5	5.7	5.7	23	3
Number of Judgeships					10	10	10	10	10	10		
Vacant Judgeship Months**					.0	.0	.0	8.8	9.4	2.1		
ACTIONS PER JUDGESHIP	FILINGS	Total	551	468	488	2,452	521	522	17	1		
		Civil	440	363	397	2,360	428	433	11	1		
		Criminal Felony	86	80	76	78	83	84	33	5		
		Supervised Release Hearings**	25	25	15	14	10	5	41	6		
	Pending Cases				388	371	396	2,423	517	499	40	2
	Weighted Filings**				519	462	514	2,454	505	521	24	2
	Terminations				537	498	2,504	538	498	469	18	1
	Trials Completed				39	39	22	20	20	20	7	2
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	8.5	8.9	8.6	8.7	8.5	8.6	43	5		
		Civil**	8.0	9.5	9.0	9.4	8.2	7.5	28	4		
	From Filing to Trial** (Civil Only)			18.5	21.8	21.0	20.0	22.5	16.5	17	4	
OTHER	Civil Cases Over 3 Years Old**	Number	35	91	74	918	68	45				
		Percentage	1.2	3.1	2.3	3.9	1.6	1.1	6	2		
	Average Number of Felony Defendants Filed Per Case				1.7	1.7	1.8	1.6	1.7	1.8		
	Jurors	Avg. Present for Jury Selection	47.08	39.24	47.92	30.59	37.98	31.15				
		Percent Not Selected or Challenged	20.3	17.0	13.4	13.2	25.7	17.4				

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4403	175	423	1839	24	193	308	425	398	98	401	13	106
Criminal*	849	8	169	77	279	156	27	24	39	38	5	5	22

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."